

# TOWN OF HARWICH BOARD OF APPEALS RULES AND REGULATIONS



These Rules and Regulations are adopted by the Zoning Board of Appeals of the Town of Harwich under the authority of the General Laws of the Commonwealth of Massachusetts ("Mass. Gen. L."), Chapter 40A, Section 12. These Rules and Regulations, as amended from time to time, become effective upon their filing with the Harwich Town Clerk and supersede any Rules and Regulations previously filed with the Town Clerk.

## 1. GENERAL

**1.1 Powers of the Board.** In accordance with Mass. Gen. L. c.40A, Section 14, and Section 325-49 of the Town of Harwich By-Laws (the "By-Laws"), the Zoning Board of Appeals of the Town of Harwich ("the Board") shall have the following powers:

(a) In accordance with Mass. Gen. L. c.40A, Section 8, to hear and decide appeals taken by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from the applicable official or by any person aggrieved by an order of the Building Commissioner, a Building Inspector, or any other administrative official in violation of any provision of Mass. Gen. L. c.40 or of the By-Laws;

(b) to hear and decide applications for special permits upon which the Board is empowered to act under the By-Laws, and applications for comprehensive permits under Mass. Gen. L. c.40B; and

(c) to hear and decide petitions for variances as set forth in Mass. Gen. L. c.40A, Section 10.

**1.2 Composition of the Board** In accordance with Mass. Gen. L. c.40A, Section 12, and Section 325-47 of the By-Laws, the Board shall consist of five (5) regular and five (5) associate members. An associate member may sit as a voting member when designated by the Chair.

**1.3 Officers; term limits.** As authorized by Mass Gen. L. c.40A, Section 12, the Board shall annually elect one (1) regular member to serve as chair and one (1) regular member to serve as clerk.

### 1.4 Duties of Officers:

(a) the Chair shall preside at all meeting of the Board.

(b) the Clerk shall:

(i) read all correspondence at meetings, provided that the Chair may permit the staff to read the correspondence;

(ii) take over the duties of the Chair when the Chair is unable to perform his/her duties.

### **1.5 Duties of Members:**

(a) All members shall:

(i) attend as many meetings as possible, alerting the Chair or staff when they are unable to attend a meeting;

(ii) be prepared to do some work outside of regular meetings.

(b) When designated by the Chair, an associate member shall participate in proceedings and vote.

**1.6 Reorganization of Board of Appeals.** At the first meeting of the Board following annual reappointments the Board shall reorganize. The Board shall elect a Chair and a Clerk from the membership, as follows: the Chair of the most recent meeting shall call for nominations from the Board members. In the absence of the Chair of the most recent meeting, the members will elect an acting Chair from its members to oversee the nomination and election of a Chair and Clerk. A successful nomination will require a second from another member. More than one nomination can be accepted for each position. When all nominations have been accepted, the Chair will call the vote. If the nominations result in a single person for each position a simple showing of hands shall constitute a vote. However, if there is a duplicate nomination for the same position, a secret ballot may be used at the option of the Board.

**1.7 Quorum.** A quorum of the Board shall consist of 3 or more members; however, there must be a minimum of four (4) members present to act on an application before the Board.

**1.8 Conflict Between These Rules and the Local or State Zoning Laws.** It is intended that the By-Laws shall govern in all respects regarding these Rules and Regulations. In the event of any conflict between the provisions of these Rules and Regulations and the By-Laws, the By-Laws shall prevail. In the event of any conflict between any provision of these laws of the Commonwealth of Massachusetts shall prevail.

## **2. Applications**

**2.1 Form of Application.** Each application for action by the Board shall be made on the official form and pursuant to the instructions thereto, which are available from the Town of Harwich Building Department. Applications shall be completed in accordance with these Rules and Regulations.



**2.2 Number of Originals.** One (1) original application (no photocopies) typewritten or hand printed, must be completed and signed by the Petitioner or the Property Owner prior to filing the application with the Board of Appeals.

**2.3 Specification of Nature of the Requested Relief.** On the application, in the space provided, the applicant must state in reasonable detail the relief being requested from the Board

**2.4 Authority of Applicant.** Any application brought by anyone other than the record owner of the property affected shall provide the name and address of the record owner and explain the applicant's relationship to the owner (e.g., lessee, holder of an option to purchase, attorney, etc.) The application shall include evidence satisfactory to the Board of the record holder's consent to the application being filed and heard.

**2.5 Materials that Must be Submitted with the Application.** Each request for action by the Board must be accompanied by one (1) original and eleven (11) copies, grouped into twelve (12) separate packets of a Certified Plot Plan & Building Elevation Plan at least 8 and ½ by 11", not more than five (5) years old, with a scale no greater than 1"=50'. The petitioner shall also file with the application twelve (12) copies of building plans and drawings prepared by a Registered Land Surveyor or qualified Professional Engineer which shall show: the locus; the parcel or parcels of land involved; the existing building or buildings; the proposed building or buildings, and/or additions to, or alterations or, existing buildings with all dimensions set forth; the location of the septic; the Town of Harwich zoning requirements applicable to rear, front and side setback distances, building height(s), building stories, building and site coverage, and parking requirements (if any); all perimeter dimensions (existing and proposed); grading plan, areas of proposed and retained vegetation, distinction between upland and wetland. The Board also requires (12) copies of architectural renderings, sketches or elevations and scaled floor plans. The Board may, in its discretion, waive these requirements or the Board may require additional material considered necessary for its review of the application. Extra copies of the plans will be disposed of after the hearing unless otherwise requested.

**2.6 Inadequate Plans or Forms.** The Board may in its discretion, consistent with the laws of the Commonwealth of Massachusetts and the By-Laws, reject any application as inadequate and may dismiss, with or without prejudice, any application for the failure to include therewith adequate plans and/or other such supporting documentation as is required by these Rules and Regulations. The Board may also ask the applicant to supplement the submission with additional information.

**2.7 Other Materials That Can Be Filed With Applications.** Applicants are encouraged to provide the Board with any other pertinent materials which may assist the Board in carrying out its duties. Such pertinent materials may include (without limitation) letters of the neighborhood's character (e.g., average setback, lot size,



house size), written narratives, arguments and briefs, as well as requests for particular findings, orders, or decisions.

**2.8 Mechanism for Filing Accompanying Materials.** Unless otherwise provided by the Mass. Gen. L. or the By-Laws, voluntary accompanying materials may be filed before the close of the hearing, but the applicants are strongly encouraged to file such materials at least seven (7) calendar days before the hearing.

**2.9 Filing Fees.** Each application, unless submitted by a duly-authorized Town office or employee on behalf of a board, commission, or other agency of the Town, shall be accompanied by a non-refundable filing fee. The fees are set by the Board and may change from time to time. A current fee schedule shall be available at the Building Department.

**2.10 Abutters List.** The Applicant shall file with the application a certified abutters list from the Town of Harwich Assessors Department, which requires a separate application and fee.

### **2.11 Withdrawal of Applications.**

**2.11.1 Prior to the Public Hearing.** Any petition for a variance or an application for a special permit which has been transmitted to the Board may be withdrawn, without prejudice to the applicant, prior to the publication of the notice to the public hearing thereon, but thereafter may be withdrawn without prejudice only with the approval of the Board. The applicant shall submit a letter in writing requesting the withdrawal and stating the reason therefor.

**2.11.2 After the Commencement of the Public Hearing.** After the commencement of the public hearing, an applicant may ask the Board to permit withdrawal of the application. The Board may, in its discretion, allow withdrawal of the application with or without prejudice.

## **3. Hearings**

**3.1 Hearing Schedule.** Hearings shall be held by the Board in accordance with the schedule determined annually by the Board. A copy of the hearing schedule may be obtained from the Town of Harwich Building Department.

**3.2 Hearings Open to the Public.** Hearings shall be held in accordance with Mass. Gen. L. Chapter 39, §23A-23C and shall be open to the public except at such times as the Board shall vote to go into Executive Session in accordance with provisions of Mass. Gen. L. Chapter 39, §23A.

**3.3 Conduct of Hearings.** The Board shall conduct hearings in accordance with the provisions of the Meeting Protocol adopted from time to time by the Board, provided

that, the Chair, in the Chair's discretion, shall have the right to change the conduct of the hearing in the interest of administrative efficiency.

**3.4 Attendance at Hearings.** An applicant must either be present at the hearing or represented by an authorized person. If no one appears at the hearing, the Board shall, in its discretion: (a) proceed with the hearing; (b) continue the hearing, or (c) dismiss the application, with or without prejudice.

**3.5 Legal Duty.** The applicant has the legal duty to make a true and complete presentation of the case, to offer evidence on each of the pertinent legal requirements, and to provide all the relevant facts and documents necessary to a fair presentation of the issues for decision by the Board. Opponents are under similar legal duty to present their cases truthfully and completely.

**3.6 Continuance.** The Board may continue any matter to another specified time, provided that notice of the date, time and place of the continued hearing and its subject matter is announced at the hearing being continued.

**3.7 Additional Submissions Required by the Board.** In the case of a Special Permit, the Board may require the applicant, at the applicant's expense, to submit professionally prepared documentation of the environmental, traffic, or other impacts of the requested relief in order to assist the Board in determining whether the requested relief will be substantially more detrimental to the neighborhood than the existing nonconformity.

#### **4. CONSULTING FEES**

**4.1 Payment of Consulting Fees.** As provided in Mass. Gen. L. c.44, §53G, the Board may impose a reasonable fee on any applicant for a special permit, variance, or other zoning relief under the Zoning By-Laws, to pay for the employment of an outside consultant to assist the Board in reviewing the application. These consulting fees are imposed in addition to any other fees assessed under these Rules and Regulations.

**4.2 Procedure.** Whenever the Board determines that it needs the services of an outside consultant, it will so notify the applicant. Once it designates an outside consultant, it will inform the applicant in writing, giving the consultant's name, an estimate of the consultant's total fee, and the amount of the initial deposit due from the applicant.

**4.3 Means of Appeal.** The applicant may appeal the Board's selection of a consultant to the Board of Selectmen, by sending the Board of Selectmen a written request for review of the Board's designation within fourteen (14) days of the applicant's receipt of the designation.



**4.4 Grounds for Appeal.** Appeals are limited to claims that the consultant has a conflict of interest or does not possess the minimum qualifications as set forth in Mass. Gen. L. c.44, §53G. The required time limits for the Board to act on the underlying application shall be extended by the duration of the appeal.

**4.5 Delivery of Initial Deposit.** If the applicant does not file an appeal within the time period specified in Section 4.3 above, the applicant shall deliver the initial deposit, in the form of a certified check or bank check, to the Town of Harwich Building Department for deposit, within the time limits set in the designation letter.

**4.6 Amount of Deposit.** The initial deposit amount may be any amount up to the estimated total of the consultant's fee. If the deposit amount is less than the estimated total, the Board may ask the applicant for supplemental deposits, which shall be due and payable within fourteen (14) days of the request.

**4.7 Grounds for Dismissal.** Failure to pay the initial or any supplemental deposit shall constitute grounds for the Board to deny the special permit, variance, or other requested zoning relief.

**4.8 Return of Unused Funds.** The Town of Harwich will pay the consultant's bills as approved by the Board, from the funds on deposit, and will return any interest earned by the deposited funds and any funds remaining unused at the completion of the applicant's project, upon direction of the Board.

## **5. Comprehensive Permits**

### **5.1 Authorization**

These rules are authorized by Mass. Gen. L. c.40B, §21.

### **5.2 Procedure**

(a) one (1) original application, including all supporting documentation required hereinafter and the filing fee, shall be filed with the Town of Harwich Building Department. An applicant may request to meet the Board or the Board's designee prior to the submission to review the application prior to filing.

(b) The Board shall immediately transmit copies of the complete application to the Board of Selectmen, Planning Board, Board of Health, Conservation Commission, Police Department, Fire Department, Highway Department, and Water Departments, Building Commissioner, Housing Authority, Park and Recreation Commission and School Committee and any other relevant board, commission, or official, and request written recommendations and an appearance at the hearing on said application. The Board shall take into consideration any recommendations of the local boards and officials.

(c) The Board shall commence a hearing within thirty (30) days of submission of the application. The length of the hearing shall reflect the size and complexity of the

application. The hearing will be terminated when all testimony has been received and all information requested by the Board has been received and reviewed.

(d) The Board shall issue a decision within forty (40) days after the termination of the hearing and file the decision in the Town Clerk's office within that same time period.

### 5.3 Complete Application and Documentation

It is the intent of the Board to have a complete application and full documentation provided with the application. In addition, the Board may require additional information during the review process, as it deems appropriate.

### 5.4 Submittal Requirements

The applicant shall submit the following information in one (1) original and eleven (11) copies:

(a) A detailed list of all requested exemptions to local requirements, including bylaws and regulations;

(b) Preliminary site development plans **at least 8 and ½ x 11", not more than 2 years old with a scale no greater than 1"=50'** showing the locations and outlines of proposed buildings; the proposed locations, dimensions and materials for streets, drives, parking areas, walks and paved areas; and structures of five or more units must have site development plans signed and stamped by a registered architect. Structures of less than five units may submit a sketch of the matters referenced herein and in subparagraph (c) below, which need not have an architect's signature and stamp, subject however, to the Board's right to require architectural plans, stamped by a registered architect, at any time prior to or during the hearing, if deemed necessary by the Board;

(c) A report, together with a plan(s) if applicable, regarding the existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. The zoning district or districts, if more than one (1) district is involved, shall also be shown on the plan. (If the abutting land is in another district or town, this shall also be shown);

(d) Preliminary architectural scaled drawings for building plans including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed and stamped by the architect;

(e) A tabulation of proposed buildings by type, size (number of bedrooms, floor area), and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;



- (f) Where a subdivision of land is involved, a preliminary or a definitive subdivision plan. If a preliminary plan is submitted, the Board shall have the right to require the applicant to submit any and all information typically required on a definitive plan, if deemed necessary by the Board;
- (g) A utilities plan showing the proposed location and types of septic, sewage, water and drainage facilities including hydrants;
- (h) Documents specified in 760 CMR 56.04 to show the status of the applicant and the acceptability of the site;
- (i) Appropriate documentation evidencing the applicant's control of the site;
- (j) Certified plan of land prepared by a registered land surveyor or a registered professional engineer;
- (k) A copy of the most recent deed to the applicant's property showing the Registry of Deed Book and Page number(s). If the property is under a Purchase and Sales Agreement, a copy of said Agreement shall also be provided;
- (l) An abutters' list certified by the Town Assessor's Office listing all "abutters" as defined in Mass. L. c.40A §11;
- (m) To the extent not included in subparagraphs (a) through (l) above, all documents specified in 760 CMR 56.05.

### **5.5 Filing Fee**

The application shall be accompanied by a nonrefundable filing fee. The fee is set by the Board and may be changed from time to time. A current fee schedule shall be available at the Building Department.

### **5.6 Written Authorization**

- (a) If the applicant is not the owner of the property, the owner(s) shall provide written authorization for the subject application by the applicant;
- (b) If the individual signing the application is unable to attend any hearing on the application, the Board shall require written authorization from the applicant that the designated representative has consent to represent the applicant or to withdraw the application.

### **5.7 Outside Consultants**

The Board may hire outside consultants for review and analysis of any application when the Board determines if appropriate. The cost for the outside consultants shall be borne by the applicant. The Board will select the consultant after reviewing both the bid and any comments received from the applicant, but it normally will not formally award the contract until the review fee has been paid. If the applicant fails



to pay the review fee within ten (10) days of receiving written notification by the Board of a bidder, the Board may deny the comprehensive permit. Pursuant to Mass. Gen. L. c.44 §53G and Mass. Gen. L. c.40B, §21, the Board, through this regulation, provide for an applicant's payment of fees for outside consultants as set forth below:

(a) The Board may require that the applicant(s) pay a review fee consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of the application.

(b) In hiring outside consultants, the Board may engage engineers, planners, traffic consultants, housing specialists and financial analysts, and /or other appropriate outside consultants who can assist the Board in reviewing and analyzing the proposal. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue of three or more years of practice in the field as issue or a related field.

(c) Funds received by the Board pursuant to this section shall be deposited with the Town of Harwich, which shall establish a special account for this purpose in accordance with the provisions of Chapter 44, §53G of the General Laws. Expenditures from this special account may be made at the direction of the Board in connection with the hearing of the specific proposal for which a review fee has been collected from the applicant without further appropriation. Failure of an applicant to pay the review fee shall be grounds for denial of the comprehensive permit.

(d) Review fees may only be spent for services rendered in connection with the specific proposal from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a proposal, any excess amount of this account, including interest, attributable to a specific project, shall be repaid to the applicant, or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purposes of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

(e) Prior to paying the review fee, the applicant may appeal the selection of an outside consultant(s) to the Board of Selectmen. The grounds for such an appeal shall be limited to the claims that the consultant(s) selected has a conflict of interest or does not possess the minimum, required qualifications.

(f) The written appeal should specify the nature of the conflict of interest and detail the lack of required qualifications. A copy of the appeal shall be simultaneously provided to the Board.

(g) The time limit for the Board's action on the proposal shall be extended by the duration of any administrative appeal to the Board of Selectmen. In the event that



the Board of Selectmen makes no decision regarding the appeal within thirty (30) days following the filing of such appeal, then the selection of the Board shall stand.

## **6. DECISIONS**

### **6.1 Recommittal and Rehearing**

If the Board determines, at any time after the public hearing closes, that an application, or the evidence submitted to support that application fails to conform in all respects with the requirements of state law and/or the By-Laws, and/or these Rules and Regulations, or fails to entitle the applicant to the requested relief, it may, subject to applicable time limitations set forth in Mass. Gen. L. c.40A, advise the applicant of its determination and provide the applicant an opportunity to revise the application or to submit additional materials.

## **7. COMMUNICATIONS WITH THE BOARD.**

**7.1 Written Communications Only.** Other than at a hearing or as e-mail, all communications to the Board must be in writing and submitted to the Town of Harwich Building Department for distribution to the Board members and filing in the permanent files. Any such communication shall be submitted in ten (10) copies.

**7.2 Electronic Communications.** Communications by e-mail should be sent only to the Board's recording secretary, whose web address is on the Board's web page, for distribution to the Board members and filing as public record.

**7.3 No Ex Parte Communications.** No applicant or interested party may hold an ex parte discussion (i.e., a discussion outside the forum of the public hearing) of any adjudicatory matter pending before the Board with a sitting Board member. Subject to the foregoing sentence, Board members prior to the hearing or before a continued hearing may make site visits to the property and the neighborhood in question.

**7.4 Time for Submission Communications.** Anyone submitting materials in connection with a pending application is encouraged to do so at least seven (7) calendar days in advance of the hearing, so that the applicant, other interested parties and Board members are insured of sufficient time to review the submission.

**8. Waiver by the Board.** The Board may, in a particular case, waive strict compliance with the requirements of these Rules and Regulations when, in the judgment of the Board, such action is in the public interest and not inconsistent with Mass. Gen. L. or the By-Laws.

**9. Board Records.** Records of the Board shall, at reasonable times, be made available to the public and copies of the same may be obtained at the then current cost established by the Board in accordance with applicable law or regulation.



10. **Amendment.** This Board may at any time amend or modify these Rules and Regulations with the concurring vote of a simple majority of the members present, and the amendment or modification shall take effect when a copy is filed with the Town Clerk.

**Adopted** by vote of the Zoning Board of Appeals of the Town of Harwich on May 29, 2013.

  
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Gary Carreiro, Chairman, Zoning Board of Appeals

Filed with the Town Clerk on JUN 10 2013.